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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

July 5, 1994

**VIA HAND DELIVERY**

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, D.C. 20554

Re: Comments of the National Association of Black Owned Broadcasters, Inc., MM Docket Number 91-221.

Dear Mr. Caton:

Transmitted herewith on behalf of the National Association of Black Owned Broadcasters are an original and fifteen copies of the Comments of the National Association of Black Owned Broadcasters, Inc. concerning MM Docket Number 91-221.

Should you have any questions concerning these Comments, please contact undersigned counsel.

Sincerely,

James L. Winston

JLW/kn
Enclosure

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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| In the Matter of | ) | |
| Review of the Policy Implications of the Changing Video Marketplace | ) | MM Docket No. 91-221 |
| To: The Commission | | |

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JUL 5 1994

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

**COMMENTS OF THE**
**NATIONAL ASSOCIATION OF BLACK OWNED BROADCASTERS, INC.**

The National Association of Black Owned Broadcasters, Inc. ("NABOB"), by its attorneys, hereby submits its Comments in the above-captioned proceeding.[1] NABOB submits these Comments to oppose the Commission's reported intention to eliminate its duopoly rule, thereby allowing a single individual or entity to own two television stations which have grade A signal contour overlap, or to otherwise increase its television ownership limits. In support of its position, NABOB submits the following:

## I. BACKGROUND

1. In this proceeding, the Commission has proposed to review its policies concerning multiple ownership of television stations. See Notice of Proposed Rule Making, Review of the Commission's Regulations Governing Television Broadcasting, 7 FCC Rcd 4111 (1992) (the "NPRM"). On February 24, 1994, Benedek Broadcasting Corporation, Chronicle Broadcasting Company, Lin Broadcasting Corporation, Midwest Television, Inc., Paducah Newspapers, Inc.,

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[1] NABOB requests leave to submit these Comments after the close of the comment period.

Post-Newsweek Stations, Inc., Providence Journal Company, and The Spartan Radiocasting Company, submitted a "Request for Prompt Resolution of Rulemaking Proceedings" (the "Request"), which requests the Commission to revise Section 73.3555(b), as amended, of the Commission's Rules (the "Duopoly Rule"), to permit common ownership of television stations whose Grade A contours do not overlap and ownership of UHF television stations by VHF television stations located in the same market and common ownership of UHF television stations in the same market.

## II. SUMMARY OF ARGUMENT

2. NABOB submits that if the Commission allows the creation of television duopolies, it will reduce the already abysmally small number of minority owned television stations. At present, African Americans own only 19 of the approximately 1,200 television stations in the United States. Any Commission rule change which would reduce that number would not serve the Commission's statutory obligation to enhance the diversity of voices controlling the nation's airwaves.

3. NABOB submits that before allowing the creation of television duopolies, or allowing any other changes in its television ownership rules, the Commission should conduct an in-depth study of the effect of elimination of its radio duopoly rule on minority ownership of radio stations and assess the potential consequences of a similar rule change on minority ownership of television stations. NABOB submits that such a study would show that, despite the continued growth of radio stations on the air

since the elimination of the Commission's radio duopoly rule, there has been no growth in minority ownership of radio stations, and indeed, that minority ownership of radio stations appears to have declined.[2]

## III. THE NEGATIVE IMPACT ON MINORITY OWNERSHIP CAUSED BY THE ELIMINATION OF THE RADIO DUOPOLY RULE DEMONSTRATES THE PROBLEM THAT ELIMINATION OF THE TELEVISION DUOPOLY RULE WILL CREATE

4. NABOB objects to the Commission's proposal to eliminate or modify the television duopoly rule. The proposed rule change would only lead to further concentration of ownership in the television broadcast industry and would substantially reduce opportunities for increased minority ownership of television broadcast facilities.

5. Specifically, the proposal enumerated in the Request submitted February 24, 1994, to allow an individual or an entity to own multiple UHF television stations or a combination of UHF and VHF television stations within a single service area would substantially reduce the opportunity for minorities to increase their ownership of television broadcast facilities.

6. The recent history of the Commission's decisions to allow individuals and entities to own a greater number of radio and television stations supports NABOB's position. For several decades, the Commission prohibited persons and entities from obtaining an ownership interest in more than seven broadcast

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[2] See Analysis and Compilation by State of Minority-Owned Commercial Broadcast Stations, National Telecommunications and Information Administration (October, 1993) (stating that between 1992 and 1993 there was a net loss of ten minority owned stations).

facilities of each service type, i.e., seven AM radio stations, seven FM radio stations, and seven television stations (the "seven station rules"). See Amendment of Sections 3.35, 3.240 and 3.636 of the Rules and Regulations Relating to Multiple Ownership of AM, FM and Television Broadcasting Stations, 18 FCC 2d 288 (1953). However, in 1985, over the strenuous objections of NABOB, the FCC increased the ownership limits to twelve AM radio stations, twelve FM radio stations, and twelve television stations (the "twelve station rule"). See Amendment of Section 73.3555 [formerly §§ 73.35, 73.240 and 73.636] of the Commission's Rules Relating to Multiple Ownership of AM, FM and Television Broadcast Stations, 100 FCC 2d 74, 57 RR 2d 966 (1985). Because Congress questioned whether this increase in the permissible number of allowable stations would be detrimental to minority owned broadcast facilities, the Commission added a condition to the twelve station rule that allowed an individual or entity to own an interest in up to fourteen of each type of station, if the two additional stations were minority controlled. Id. 57 RR 2d at 981-982.

7. Although this special provision was intended to encourage non-minority companies to enter into joint ventures with minority controlled companies, NABOB is unaware of any non-minority company that has utilized this provision to enter into a joint venture with a minority owned company. Accordingly, the Commission's "solution" to Congress's concern over a potential decline in minority ownership as a result of the adoption of the twelve station rule failed to assist minority owned stations in any way.

8. On the other hand, as a result of the increased ownership limits, a variety of mega-mergers resulted: Capital Cities, Inc. acquired ABC, the General Electric Corporation acquired NBC, and several other major group owners took advantage of the relaxed twelve station rules to merge into even larger groups. Accordingly, rather than create the "trickle-down" effect envisioned by the Commission in which the smaller, independent stations would be able to receive an infusion of capital from larger stations, the twelve station rule created a "trickle-up" effect. Groups which could afford to expand their holdings paid inflated prices for the most lucrative small groups and stand-alone stations, while leaving other, less profitable stations at an even greater competitive disadvantage.

9. The competitive disadvantage suffered by minority owned broadcast stations was further compounded when, in Revision of Radio Rules and Policies, MM Docket No. 91-140, 7 FCC Rcd 2755 (1992), the Commission eliminated the radio duopoly rule and allowed a single entity or person to own up to four stations in a market (two AM and two FM). The Commission also allowed a single entity or person to own up to thirty AM radio stations, thirty FM radio stations (the "thirty station rule"). NABOB strenuously objected to these changes in the Commission's rules, and, on reconsideration, the Commission reduced the multiple ownership limits to eighteen AM radio stations and eighteen FM radio stations (the "eighteen station rule"), but the Commission declined to reconsider the elimination of the duopoly rule. Memorandum Opinion

and Order and Further Notice of Proposed Rulemaking, 7 FCC Rcd 6387 (1992). NABOB currently has a petition for reconsideration of this rulemaking action pending before the Commission. The elimination of the duopoly rule and the eighteen station rule are now in effect and continue to hamper the efforts of minorities to obtain and control broadcast facilities.

10. A study published in the February 22, 1994 issue of Radio Business Report, ("RBR"), shows that only the larger, most financially successful radio stations are being brought together under duopoly control. RBR reported that, while radio stations under duopoly ownership account for only 22% of the listening audience, those stations account for over 31% of the radio station revenues. RBR, February 21, 1994 at p.6. Thus, contrary to the assertion that elimination of the radio duopoly rule would allow financially weak stations to combine their resources to become stronger competitors, the study reported in RBR shows that financially strong stations are combining resources and are creating additional competitive pressure on minority owned and other smaller stations.

11. The elimination of the duopoly rule, the implementation of the eighteen station rule, and other deregulatory efforts promulgated during the past decade have clearly worked to preclude growth in ownership of radio and television facilities by minorities, particularly African Americans. As noted above, although there are approximately 1,200 commercial broadcast television stations in the United States, only 19 of these

television stations, less than two percent of the total number, are African American owned.

12. Against this stark background, the Commission should not consider implementation of policies that would significantly impede further minority ownership in the broadcast industry.

13. Instead, the Commission should conduct a study to determine the effects of the elimination of the radio duopoly rule and the creation of the eighteen station rule on minority ownership of radio stations before taking any action to increase common ownership of television stations. In the order eliminating the radio duopoly rule and creating the eighteen station rule, the Commission stated that it would conduct such a study, but it has never done so. See 7 FCC Rcd at 6390.

## IV. CONCLUSION

WHEREFORE, NABOB asks the Commission to make no change to the present rules that would result in an elimination or modification of the television duopoly rule or which would increase the national television ownership limits. NABOB further requests that the Commission conduct a study to review the impact suffered by minority owners as a result of the Commission's elimination of the radio duopoly rule and the increase in the national ownership limits and to examine the negative effect that the elimination of the television duopoly rule and the increase in the national ownership limits would have on minorities.

Respectfully submitted,

**NATIONAL ASSOCIATION OF BLACK OWNED BROADCASTERS**

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Dated: July 5, 1994

## CERTIFICATE OF SERVICE

I, Rena I. Curtis, a secretary in the law firm of Rubin, Winston, Diercks, Harris & Cooke, do hereby certify that true copies of the foregoing Comments of the National Association of Black Owned Broadcasters, Inc. were sent this 5th day of July, 1994, by first-class United States mail, postage prepaid, to the following:

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